

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2568 OF 2005

IN

SUIT NO.1459 OF 1999

Udipi Babu Rao.

...Plaintiff.

vs.

Radhakrishna Babu Rao.

...Defendant.

Mr.B.G.Vaidya, for Plaintiff

Mr.M.P.S.Rao i/b. A.S.Ramesh, for Defendant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 2nd April,2007

P.C.:-

1. This is a notice of motion taken out by the defendant for dismissal of the suit under Order VII Rule 11(d) of the Code of Civil Procedure. Perusal of the provisions of Order VII Rule 11(d) of the C.P.C. shows that in order to reject the plaint under that provision the suit should appear to be barred by any law from the statements made in the plaint. Thus, for dismissing the suit under Order VII Rule 11(d)

of the C.P.C. the only material Court can look into is the averments made in the plaint. According to the defendant, the averments made in the plaint shows that the suit is barred by the law of Limitation and therefore, it should be dismissed. But the averments made in the plaint shows that, according to the plaintiff, by playing fraud and taking advantage of illiteracy and old age of the plaintiff, the defendant and other sons of the plaintiff had obtained his signature on blank papers and his shop was taken by the defendant. If the plaintiff is alleging fraud, then in terms of the provisions of Section 17 of the Limitation Act, the period of limitation starts running not from the date on which the act occurred against which the grievance is made but the date on which the fraud is discovered. The plaint shows that the plaintiff discovered the fraud recently and therefore, if one goes only by the averments in the plaint the suit does not appear to be barred by the law of limitation, and therefore, the notice of motion cannot be granted. The notice of motion is disposed of.
